

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

_____)	
UNITED STATES OF AMERICA and)	
THE STATE OF WISCONSIN,)	
)	
Plaintiffs,)	Civil Action No. 10-C-910
)	
v.)	Hon. William C. Griesbach
)	
NCR CORPORATION, <i>et al.</i> ,)	
)	
Defendants.)	
_____)	

**DECLARATION OF KRISTIN M. FURRIE
SUBMITTED IN RESPONSE TO GLATFELTER'S MOTION TO RECONSIDER THE
DECISION AND ORDER ON THE PROPRIETY OF THE REMEDY**

I, Kristin M. Furrie, declare as follows:

1. I am a Trial Attorney with the Environmental Enforcement Section of the United States Department of Justice. I have served as counsel for the United States on matters concerning the Lower Fox River and Green Bay Superfund Site (the "Site") since 2011.

2. Exhibit 1 to this Declaration is a true and correct copy of a February 1998 Freedom of Information Act request to EPA from Sidley & Austin, which has served as counsel for NCR Corporation ("NCR") on matters concerning the Site.

3. Exhibit 2 to this Declaration is a true and correct copy of a Sidley & Austin transmittal memorandum and accompanying documents that are described as having been received from EPA. The transmittal memorandum and the accompanying documents were produced in by Appleton Papers Inc. ("API") in discovery in *Appleton Papers Inc. v. George A. Whiting Paper Co.*, No. 08-cv-16 (E.D. Wis.) (the "Whiting" case), as signified by the "API-GE" Bates coding applied to the pages. Many of the same documents were produced by NCR in

discovery in *Whiting* case, as signified by the “NCR-FOX” Bates coding applied to the pages, although some versions of those documents had added stamps showing that they were received on March 11, 1998 by a consulting firm that worked for the Fox River Group, *de maximis, inc.* Examples of those versions of the documents have been filed with the Court’s ECF system as Dkt. 620-1 and 620-3.

4. In response to a Wisconsin Public Records Act request to WDNR, more than 500 pages of documentation concerning the EPA-WDNR cooperative agreement was produced to Menasha Corporation (“Menasha”) in 2008, as signified by the “WDNR” Bates coding applied to the pages. I understand that Menasha shared that entire document collection with a number of other defendants in this case. That WDNR document collection included the signed cooperative agreement form that has been filed with the Court’s ECF system as Dkt. 620-2 as well as application materials and several amendments extending the cooperative agreement.

5. During the fact discovery period in this case that closed on or about September 30, 2012, the Plaintiffs produced more than 150 documents concerning the EPA-WDNR cooperative agreement.

6. Trial Exhibit 2113 is a true and correct copy of a set of documents concerning the EPA-WDNR cooperative agreement for this Site from the EPA Region 5 Superfund cost accounting files in Chicago, as signified by the “EPACOST” Bates coding applied to the pages.

7. Glatfelter and the other defendants deposed 13 current and former EPA and WDNR employees during the fact discovery period last summer. Based on an electronic word search of those 13 depositions, I find only one occasion when a question was asked using the words “cooperative agreement.” Counsel for CBC Coating asked Edward Lynch, the WDNR project manager for the remedial investigation/feasibility study work, about a 2002 e-mail that he sent to his EPA counterpart and others discussing whether “additional research into the models

used on the Fox” proposed by a former WDNR employee “would be eligible to be done as part of the DNR Superfund cooperative agreement on the Fox.” Mr. Lynch answered that question by CBC’s Counsel – and at an earlier point he had mentioned that he personally prepared the initial EPA funding application – but Glatfelter and the other defendants asked no follow-up questions about the “cooperative agreement” referenced in the e-mail. Exhibit 3 to this Declaration is a true and correct copy of pertinent excerpts of the August 22, 2012, deposition of Edward Lynch. Exhibit 4 to this Declaration is a true and correct copy of the above-referenced e-mail that was marked as deposition exhibit 4165 and used during Mr. Lynch’s deposition.

8. The EPA-WDNR cooperative agreement itself was not among the nearly 500 deposition exhibits shown to any of the deponents during the discovery in this case taken in 2012.

9. Exhibit 5 to this Declaration is a true and correct copy of pertinent excerpts of the August 20, 2012, deposition of former WDNR employee Robert Paulson.

10. Exhibit 6 to this Declaration is a true and correct copy of pertinent excerpts of the August 28, 2012, deposition of the EPA Remedial Project Manager for the Site, James Hahnenberg.

11. During the discovery period in 2012, the Plaintiffs received three notices of deposition pursuant to Fed. R. Civ. P. 30(b)(6): one that NCR served on the United States, one that Menasha served on the United States, and one that Menasha served on the State of Wisconsin. The Plaintiffs served two collective responses to those three deposition notices. A true and correct copy of the United States’ response to NCR’s Rule 30(b)(6) notice has been filed with the Court’s ECF system as Dkt. 749-7. A true and correct copy of the Plaintiffs’ joint response to Menasha’s Rule 30(b)(6) notices has been filed with the Court’s ECF system as Dkt. 479-4.

12. Exhibit 7 to this Declaration is a true and correct copy of a December 13, 2012, letter that I sent to sent to David G. Mandelbaum, counsel for Glatfelter, concerning the EPA-WDNR cooperative agreement for the Site and related documents that were located in a targeted search of EPA and WDNR files. My letter is mis-dated November 13, 2012, and should have been dated December 13, 2012. As referenced my letter, I hand delivered compact discs containing more than 400 documents located in that search to Glatfelter's counsel in Court on the morning of December 14, 2012. A number of those documents had already been filed with the Court's ECF system earlier in the day on December 13, 2012, as attachments to two declarations. Dkt. 711, 712.

13. The closing paragraph of my December 13, 2012, letter to Mr. Mandelbaum read as follows:

Because both EPA and WDNR have located authentic versions of the Cooperative Agreement and those versions include the language relied upon by the Court when determining that a Cooperative Agreement existed, the Plaintiffs do not believe that further discovery on this issue is warranted. If you disagree, please let us know tomorrow morning so that we can raise it with the Court on Friday, December 14, 2012.

The United States received no indication that Glatfelter disagreed or wished to seek further discovery on this issue until Glatfelter filed its motion for reconsideration on February 4, 2013. Dkt. 734.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: February 20, 2013

s/ Kristin M. Furrie

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this day, the foregoing Declaration was filed electronically with the Clerk of the Court using the Court's Electronic Court Filing System, which sent notification of such filing to the following counsel:

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Dated: February 20, 2013

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